

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SYNOPSYS, INC.,

Plaintiff,

v.

RICOH CO., LTD.,

Defendant.

No. C-03-2289 MJJ (EMC)

No. C-03-4669 MJJ (EMC)

**ORDER DENYING MOTION FOR
PROTECTIVE ORDER RE KOWALSKI
DEPOSITION**
(Docket No. 159 in No. C-03-2289; Docket
No. 227 in No. C-03-4669)

RICOH CO., LTD.,

Plaintiff,

v.

AEROFLEX, et al.,

Defendants.

Synopsys and the ASIC Defendants (collectively “Defendants”) have filed a letter brief with the Court, asking it to issue a protective order with respect to the deposition of Dr. Kowalski and to extend the time by which Defendants’ objections to the deposition are due. Having considered both Defendants’ letter and Ricoh’s letter in response, as well as the accompanying submissions, and good cause appearing therefor, the Court hereby rules as follows.

The deposition of Dr. Kowalski shall not proceed. Judge Jenkins has made clear in the July 14, 2004 telephonic conference that he is not going to receive any expert testimony on claims construction. *See* Letter from K. Brothers to Court of 7/23/04, Ex. 4, at 12, lines 20-23 (transcript). Although Judge Jenkins is not prohibiting the parties from submitting declarations, he is not going to

1 consider them until he sees a need for it. *Id.* at 13, lines 22-24. If Judge Jenkins sees a need for
2 extrinsic evidence and thus considers expert testimony (by declaration and/or testimony), he has
3 stated he will give each side a chance to respond even though that will “elongate the process.” *Id.* at
4 14, lines 8-12, 21-22. If that process is so elongated, there will be an opportunity to take Dr.
5 Kowalski’s deposition in due course. Defendants are admonished that if that eventuality
6 materializes, they must make Dr. Kowalski available on reasonably short notice so as to avoid any
7 unreasonable delay in Judge Jenkins’ construction process.

8 The parties are also forewarned that any future failure to comply with this Court’s order (*e.g.*
9 regarding submission of joint letters) will result in sanctions. The parties’ failure to file a joint letter
10 in this instance is inexcusable.

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12 IT IS SO ORDERED.

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14 Dated: July 28, 2004

15 /s/
16 EDWARD M. CHEN
17 United States Magistrate Judge
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